SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5216-15T2

F.J.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES and CAMDEN COUNTY BOARD OF SOCIAL SERVICES,

Respondents-Respondents.

Argued November 13, 2017 – Decided January 9, 2018

Before Judges Accurso and Vernoia.

On appeal from the Department of Human Services, Division of Medical Assistance and Health Services, Docket No. 0410053111.

Joseph T. Threston argued the cause for appellant.

Melissa Bayly, Deputy Attorney General, argued the cause for respondent Division of Medical Assistance and Health Services (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Melissa Bayly, on the brief).

PER CURIAM

F.J. appeals from a final decision of the Director of the Division of Medical Assistance and Health Services (DMAHS) finding her ineligible for Medicaid benefits because her available resources exceeded the $2000 resource limit. We affirm.

The Camden County Board of Social Services denied F.J.'s request for Nursing Home Medicaid, finding she had resources of $6725.77; $1066.89 in two Wells Fargo accounts and $5658.88 in an account maintained at Morgan Stanley. F.J. sought a fair hearing, and the matter was transferred to the Office of Administrative Law. In the OAL, the parties stipulated to the amounts in the accounts, and that the Wells Fargo accounts were unrestricted, permitting F.J. access to the funds. The only issue was the ownership of the restricted Morgan Stanley account.

C.J., F.J.'s daughter and guardian, testified she opened the account in 1985 with her own money, only adding F.J.'s name to the account as a convenience. C.J. claimed she made no further deposits into the account and that neither she nor her mother ever made withdrawals. In a certification, C.J. averred the Morgan Stanley account was a joint account with her mother, and, like a joint account the two maintained with Ameritrade, both had to "sign off on the account" to make withdrawals.

Based on the testimony, the administrative law judge rendered an initial decision, finding the account belonged to the daughter and should not be counted in determining F.J.'s eligibility for Medicaid.

The Director reversed, finding no competent evidence to support C.J.'s testimony about the ownership of the account or the source of the funds, see N.J.A.C. 1:1-15.5(b) (the "residuum rule"), and remanded for further fact-finding.

On remand, F.J. submitted a 2014 Morgan Stanley account statement bearing the names of both C.J. and F.J. as joint tenants, and a letter from Ameritrade explaining that in an account held by joint tenants with right of survivorship, each owner has an undivided interest in the entire account and can act independently with regard to transactions. The ALJ accepted the letter as proof that F.J. had unrestricted access to all of the funds in the joint Ameritrade account she held with her daughter. He further found, based on C.J.'s certification that the Morgan Stanley account operated in the same fashion as the Ameritrade account and the absence of any documentation showing F.J.'s access to the Morgan Stanley account was restricted, that "there is not sufficient evidence to overcome the presumption that, like the . . . Ameritrade account, F.J. has access to all of the funds in the Morgan Stanley account." The ALJ

accordingly concluded that all of the funds in the Morgan Stanley account should be considered available resources to F.J., making her ineligible for Medicaid. The Director adopted the ALJ's decision on remand.

On appeal, F.J. argues the parties stipulated the account at Morgan Stanley was a restricted "and" account, the unrebutted testimony was that the funds belonged to C.J., and that they were not accessible to F.J. in any event because of her incapacity, making them not countable toward her resource maximum under N.J.A.C. 10:71-4.1(d)(2). We reject those arguments.

Our role in reviewing the decision of an administrative agency is limited. In re Stallworth, 208 N.J. 182, 194 (2011). We accord a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, City of Newark v. Nat. Res. Council, 82 N.J. 530, 539, cert. denied, 449 U.S. 983 (1980), and defer to its fact finding, Utley v. Bd. of Review, 194 N.J. 534, 551 (2008). We will not upset the determination of an administrative agency absent a showing that it was arbitrary, capricious, or unreasonable; that it lacked fair support in the evidence; or that it violated legislative policies. Lavezzi v. State, 219 N.J. 163, 171 (2014); Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963).

Applying those standards here, we are satisfied the Director was correct in adopting the ALJ's decision on remand. N.J.A.C. 10:71-4.1(d)(2) provides:

> When a savings or checking account is held by the eligible individual with other parties, all funds in the account are resources to the individual, so long as he or she has unrestricted access to the funds (that is, an "or" account) regardless of their source. When the individual's access to the account is restricted (that is, an "and" account), the [county welfare agency] shall consider a pro rata share of the account toward the appropriate resource maximum, unless the client and the other owner demonstrate that actual ownership of the funds is in a different proportion. If it can be demonstrated that the funds are totally inaccessible to the client, such funds shall not be counted toward the resource maximum. Any question concerning access to funds should be verified through the financial institution holding the account.

Although the parties initially stipulated the Morgan Stanley account was a restricted one (an "and" account), C.J. certified the account operated in the same way as her and her mother's Ameritrade account. She subsequently produced a Morgan Stanley statement, which listed her and her mother as joint tenants, and a letter from Ameritrade explaining that joint tenants each have an undivided interest in the entire account and can act independently with regard to transactions.

Those facts provide ample support for the Director's reasonable conclusion that F.J. had unrestricted access to the funds in the Morgan Stanley account held with her daughter. Although F.J. argues the Board of Social Services should be held to its stipulation that the Morgan Stanley account was restricted, the Director rejected that stipulation as without adequate support in the record under the residuum rule when she reversed the ALJ's first decision in the case. Relying on the law governing joint bank accounts, N.J.S.A. 17:161-4, the Director found that under New Jersey law "and absent any evidence from the financial institution[], [F.J.] would have had unrestricted access to the funds and the account is considered her asset." The Director remanded the matter to the ALJ to permit F.J. to adduce evidence from Morgan Stanley that her access to the account was restricted. See Negrotti v. Negrotti, 98 N.J. 428, 433 (1985) (holding a party losing the benefit of a stipulation must be provided "the same opportunity to present his proofs as he would have received had the stipulation not been entered on the record").

F.J. produced no such evidence on remand. Indeed, the evidence she did produce, the Ameritrade letter and Morgan Stanley statement, coupled with C.J.'s prior certification, leads ineluctably to the conclusion that F.J. had access to all

the funds in the Morgan Stanley account. That F.J. would have been unable to withdraw the funds herself due to her incapacity is of no moment as she could have done so through her court appointed guardian, C.J. Cf. Chalmers v. Shalala, 23 F.3d 752, 755 (3d Cir. 1994) (holding disabled individual's physical and mental inability to manage her resources did not preclude her from exercising her legal right to such resources). F.J.'s argument that the Board should be equitably estopped from repudiating a factual stipulation, the accuracy of which she has been unable to demonstrate, is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.